

Brung
Davies
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Wall
December 7, 1992

MEMORANDUM TO THE COMMITTEE OF COUNSEL

Re: Arizona Board of Pharmacy

As we have previously reported, the Coalition for a Tobacco-Free Arizona filed a petition in October with the Arizona Board of Pharmacy requesting the classification of low "tar" and nicotine cigarettes as drugs. The Board discussed the petition at its regularly scheduled public meeting on November 19, 1992.

The Coalition was represented by a Ms. Kane of the American Heart Association and Jeffrey Walker, an attorney from Lewis and Roca, a prominent Phoenix law firm. Walker stated that he was there as a member of the Coalition, not as its counsel. Ms. Kane stated that Arizona and four other states had been targeted by the Coalition after it became frustrated with FDA's failure to respond to earlier federal petitions. Walker then summarized the Coalition's argument that the Arizona statutory definition of drug should be interpreted to include low "tar" and nicotine cigarettes.

The Board took no formal action. Instead, the Board's President, Mr. Jacob, suggested that the Board's staff determine what the FDA and the other states are doing in response to these petitions. We understand that he had been advised to take this course by Montgomery Lee, the Arizona Assistant Attorney General who acts as counsel for the Board. Jacob and one other Board member also made reference to the

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1988 Premier case, in which the Board had concluded that it had no jurisdiction in the matter.

The Board's next meeting is January 28-29, 1993, and further action or more substantive discussions are expected then. Local representatives of The Tobacco Institute and Philip Morris are monitoring this situation. Meetings were held prior to the November 19 hearing with Assistant Attorney General Lee and the Executive Director of the Board of Pharmacy. In addition, Steven Duffy of Ridge and Isaacson, which is representing TI, sent a letter to the Board briefly reviewing the Board's prior action on Premier and arguing that, based on the Premier precedent, the Board should not assert jurisdiction over the present petition.

We will continue to keep you informed.

Melinda Ledden Sidak

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